

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL O'CONNELL and
DIANE O'CONNELL,

Plaintiffs,

v.

Case No. 11-13990

Hon. Victoria A. Roberts

CITIMORTGAGE, INC., et al.,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION IN PART;
DISMISSING PLAINTIFFS' COMPLAINT; AND ENTERING DEFAULT
JUDGMENT AGAINST PLAINTIFFS ON CITIMORTGAGE'S COUNTER-COMPLAINT**

Before the Court is CitiMortgage's motion to dismiss and for entry of default judgment on its counter-complaint for quiet title (Doc. # 37) and Orleans's motion to dismiss (Doc. # 38). All pretrial matters were referred to Magistrate Judge Paul J. Komives. On April 3, 2014, Magistrate Judge Komives submitted a Report and Recommendation regarding the outstanding motions. (Doc. # 41).

Magistrate Judge Komives recommends that the Court: (1) grant Defendants' motions to dismiss under Fed. R. Civ. P. 41(b) for Plaintiffs' failure to prosecute this case; (2) dismiss Plaintiffs' complaint with prejudice; (3) enter default judgment against Plaintiffs under Fed. R. Civ. P. 55(b) for failing to respond to CitiMortgage's counter-complaint for quiet title (Doc. # 33); (4) conduct an inquest as to the amount of damages under Rule 55(b)(2)(B); and (5) enter a modified version of CitiMortgage's proposed order conforming title (see Doc. # 37-3).

Neither party filed objections within the time provided under 28 U.S.C. §636(b)(1)

and E.D. Mich. LR 72.1(d).

The Court **ADOPTS IN PART** the Magistrate Judge's Report and Recommendation. Because CitiMortgage seeks quiet title in its counter-complaint, and not damages, the Court need not determine the amount of damages; thus, the Court declines to adopt the Magistrate Judge's recommendation to conduct an inquest under Rule 55(b)(2)(B). Other than that, the Court **ADOPTS** the Report and Recommendation in full and **ORDERS** that:

(1) CitiMortgage's and Orlans's motions to dismiss (Docs. #37 and 38) are **GRANTED** under Fed. R. Civ. P. 41(b) for Plaintiffs' failure to prosecute this case;

(2) Plaintiffs' complaint is **DISMISSED WITH PREJUDICE**;

(3) CitiMortgage is not entitled to reasonable fees and expenses under Fed. R. Civ. P. 37(b)(2)(C) for Plaintiffs' failure to comply with a Court order. However, CitiMortgage may present a bill of costs to the Clerk of this Court under 28 U.S.C. § 1920 and Fed. R. Civ. P. 54(d)(1);

(4) This Order may be recorded with the Wayne County Register of Deeds ("WCRD"); and

(5) Default judgment is entered against Plaintiffs for failing to respond to CitiMortgage's counter-complaint for quiet title. As part of the judgment of default, the Court determines that:

(A) The document entitled "Assignment of Mortgage," dated January 13, 2009 and recorded with the WCRD on February 16, 2009 at Liber 47715, Page 831 – which purports to assign a valid mortgage dated October 4, 2006 and recorded with the WCRD on November 20, 2006 at Liber 45619, Page 389 (the "Mortgage"), securing real property located at 24802 Christian Drive, Flat Rock, Michigan 48134 (the "Property") – is NULL AND VOID AND OF NO FORCE AND EFFECT;

(B) The document entitled "Assignment of Mortgage," dated July 8, 2009 and recorded with the WCRD on July 29, 2009 at Liber 48048, Page 248 – which purports to assign the Mortgage securing the Property – is NULL AND VOID AND OF NO FORCE AND EFFECT;

(C) The document entitled "Assignment of Mortgage," dated July 29, 2009 and recorded with the WCRD on August 3, 2009 at Liber 48054, Page 1490 – which purports to assign the Mortgage securing the Property – is NULL AND VOID AND OF NO FORCE AND EFFECT;

(D) The document entitled "Sheriff's Deed on Mortgage Foreclosure," dated February 23, 2011 and recorded with the WCRD on March 8, 2011 at Liber 49017, Page 223 is NULL AND VOID AND OF NO FORCE AND EFFECT;

(E) The document entitled "Quit Claim Deed," dated April 5, 2011 and recorded with the WCRD on April 11, 2011 at Liber 49136, Page 1256 – which purports to quit claim CitiMortgage's interest in the Property to U.S. Bank, N.A., as Trustee for CitiGroup Mortgage Loan Trust 2007-AMC2 – is NULL AND VOID AND OF NO FORCE AND EFFECT;

(F) The preparation and recording of the documents in the above subsections (A) - (E) did not cause Plaintiffs any damages;

(G) No part of this Order affects or alters the validity of the Mortgage securing the Property;

(H) No part of this Order affects or alters the validity of the Assignment of Mortgage dated February 11, 2008 and recorded with the WCRD on April 4, 2008 at Liber 47150, Page 211; and

(I) Based upon the only true and correct chain of title, the current mortgagee of the Mortgage is U.S. Bank, N.A., as Trustee for CitiGroup Mortgage Loan Trust 2007-AMC2, as nominee for lender and lender's successors and assigns.

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: May 15, 2014

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on May 15, 2014.

S/Carol A. Pinegar _____
Deputy Clerk